IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

OP.No. 22352 of 2001(J)

PETITIONER:

PAUL MATHEW, PROPRIETOR, CARCOOL ENGINEERS, PUBLIC LIBRARY BUILDING, CONVENT ROAD, ERNAKULAM.

BY ADV. SRI.P.V.BABY

RESPONDENTS:
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1. SALES TAX OFFICER, THEVARA, OFFICE OF THE DEPUTY COMMISSIONER, COMMERCIAL TAXES, THEVARA, ERNAKULAM.

2. DEPUTY TAHSILDAR (REVENUE RECOVERY), KANAYANNUR, ERNAKULAM.

BY G.P. SRI.C. K. GOVINDAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 29/03/2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP36552 OF 2001 IN OP 22352 OF 2001

DISMISSED

29.3.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE PHOTOCOPY OF INJUNCTION ORDER ISSUED BY THE MUNSIFF'S COURT, IN I.ANO.5087 OF 1997

EXT.P2 TRUE PHOTOCOPY OF THE REVENUE RECOVERY NOTICE ISSUED BY THE 2ND RESPONDENT DATED 22.2.2001

EXT.P3 TRUE PHOTOCOPY OF EXTRACT OF REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT DATED 23.6.2001

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

O.P. NO. 22352 OF 2001

Dated this the 29th day of March, 2007

JUDGMENT

Petitioner is challenging Ext.P2 revenue recovery proceedings for recovery of penalty and interest demanded under KGST Act for 1995-96. Petitioner has taken a technical contention that no penalty order was served on the petitioner for 1997-98 as shown in Ext.P2. However, Government Pleader has produced records which show that penalty levied and sought to be recovered under Ext.P2 is for the assessment year 1995-96 and the year 1997-98 referred to in Ext.P2 is only the year in which proceedings were initiated and finalised. Petitioner's contention that he is unaware of penalty is absolutely wrong because petitioner on 14.12.1999 has acknowledged receipt of penalty order dated 8.10.1999. On being shown acknowledgement endorsed in the penalty order, petitioner, who is present court, admitted that the signature put on the said order on 14.12.1999 is his. In fact prior to service of order petitioner has sent several communications engaging counsel, taking adjournment etc. and it is clear from the

records that petitioner was just dodging the penalty proceedings without filing proper reply or defending the case. Therefore obviously the allegation made by the petitioner that he is not served with penalty order is absolutely wrong and false. Petitioner has also not admittedly filed revision challenging the penalty order.

2. Though counsel for the petitioner contended that petitioner was engaged in servicing of automobile air-conditioners what is disclosed in the penalty order is that petitioner got several consignments of air-conditioners through air cargo and made unaccounted sales details of which were collected by the department from the Indian Airlines and Jet Airways. In the circumstances on merits also prima facie I find no case for the petitioner. Stay was granted by this court believing the petitioner's own statement in court that petitioner was not served with penalty order. In the circumstances, O.P. is only to be dismissed with costs. However, I feel one more opportunity can be given to the petitioner to contest the matter in revision provided petitioner deposits at least 50% of the penalty amount without interest, that is the tax sought to be evaded, as a

condition for granting an opportunity.

3. O.P. is therefore disposed of directing the petitioner to deposit Rs. 1.25 lakhs within one month from today, and if payment is made and receipt produced before the Intelligence Officer, he will give one more copy of the penalty for the petitioner to file revision. Along with receipt for Rs. 1.25 lakhs if a revision is filed within one month from today, the revisional authority will entertain the same as one filed in time call for the records hear the petitioner and dispose of the revision within six weeks thereafter. Revenue recovery proceedings will be kept in abeyance for one month from today, and if petitioner does not remit Rs. 1.25 lakhs as above, then respondents will proceed for recovery of the entire arrears. However, if payment is made and revision filed, recovery of balance will remain stayed for three months from now and thereafter recovery will be based on orders in revision.

(C.N.RAMACHANDRAN NAIR)
Judge